

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3742 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HIMATBHAI KALYANBHAI SOLANKI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR KC SHAH, A.G.P., for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu - Himatbhai Kalyanbhai Solanki (Vankar) has brought under challenge the detention order dated 25th March 1996 rendered by the respondent No.1 u/s.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

2. The ground on which the impugned order of detention has been passed appear at Annexure : B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of storing and selling liquor and following prohibition offences have been registered in the Gomtipur Police Station, Ahmedabad :

1. CR No.176/95 U/ss.66B, 65E of the Bombay Prohibition Act. 35 ltrs. of country liquor. The matter is pending in the Court.
2. CR No.369/95 U/ss.66B, 65E of the Bombay Prohibition Act. 8 ltrs. of country liquor. The matter is pending in the Court.
3. CR No.518/95 U/ss.66B, 65E & 81 of the Bombay Prohibition Act. 4 ltrs. of country liquor. The matter is pending for investigation.
4. CR No. 4/96 U/s. 93 of the Bombay Prohibition Act. 4 ltrs. of country liquor. The matter is pending for investigation.
5. CR No.124/96 U/ss. 66B, 65E of the Bombay Prohibition Act. 32 ltrs. of country liquor. The matter is pending for investigation.

In so far as the last case is concerned it is stated to have reference to the point of time on or around 3.3.1996 and the petitioner has been enlarged on bail in that offence.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of four witnesses have been relied upon. They indicate about two incidents, one occurring on 15.2.1996 and second occurring on 21.2.1996. Both the incidents indicate threatening administered to the concerned witnesses, their beating in the public place and rushing at the people collected at the place with knife leading to the dispersing of the people collected on such occasions.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped as a boot-legger within the meaning of section

2(b) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta,
C.P., reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in paras : 11 and 12 of the citation and it has been submitted that facts of the present case run almost parallel to the facts before the Apex Court in Mustakmiya's case (Supra).

6. In Mustakmiya's case reference has been made to the earlier decision in the case of Piyush Kantilal Mehta V/s. Police Commissioner, reported in 1989 Suppl. (1) SCC 322, which was a case of a boot-legger facing prohibition cases concerning a huge quantity of foreign liquor. There also general statements of the witnesses were recorded similar to the statements in the present case. The statements recorded in Mustakmiya's case were more grave in nature. It is, therefore, submitted that the present case is squarely covered by Mustakmiya's case which has in turn referred to Piyush Kantilal Mehta's case (Supra).

7. In reply Mr.K.C.Shah, learned A.G.P. for the State has relied upon a decision in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi V/s. State of Maharashtra and anr., reported in A.I.R. 1992 SC 979. Comparing the facts of the present case with the facts in the case before the Supreme Court, it clearly appears that the decision in Mrs.Harpreet Kaur's case (supra) would not be applicable. It has further been submitted by Mr.K.C.Shah, learned A.G.P. for the State that here is a case where inspite of the fact that on or around 10.1.1996 the petitioner was required to give surety before the Sub-Divisional Magistrate in the proceeding u/s.93 of the Bombay Prohibition Act, he has committed the last mentioned offence on or around 3.3.1996. He,

therefore, submitted that this is not a case which would call for application of Mustakmiya's ratio. I am unable to agree with the submission of Mr.K.C.Shah as the same does not take out the matter from its relation with law and order situation not affecting public order.

8. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of the decision of Mustakmiya's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu Himatbhai Kalyanbhai Solanki (Vankar) shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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